

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 9, 2007

CLIFFORD RICE v. GLEN TURNER ET AL.

Appeal from the Chancery Court for Davidson County
No. 04-1401-III Ellen Hobbs Lyle, Chancellor

No. M2004-02284-COA-R3-CV - Filed November 15, 2007

This appeal involves a prisoner's challenge to the actions of an administrative disciplinary board at a privately operated prison in Hardeman County. After exhausting his administrative remedies, the prisoner filed a petition for a common-law writ of certiorari in the Chancery Court for Davidson County, naming several prison employees as defendants. The trial court dismissed the petition for improper venue and declined to transfer the case to the appropriate court because the petition failed to state a claim upon which relief could be granted. The prisoner appealed. We affirm the dismissal of the prisoner's petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Clifford Rice, Whiteville, Tennessee, Pro Se.

James I. Pentecost and K. Michelle Booth, Jackson, Tennessee, for the appellees, Glen Turner, Robert Adams, Fontella Mason, and Sheila Martin.

MEMORANDUM OPINION¹

I.

Clifford Rice is incarcerated at the Hardeman County Correctional Facility, a prison operated by Corrections Corporation of America. In early 2004, Mr. Rice was accused of extorting money from another inmate and of abusing his telephone privileges. On March 23, 2004, the prison's

¹Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

disciplinary board found Mr. Rice guilty of extortion and punished him with a four dollar fine and five days of segregation. Mr. Rice appealed the finding of guilt to the prison warden, Glen Turner, who affirmed the board's finding. Mr. Rice then appealed to the Commissioner of Correction who also affirmed the finding.

Mr. Rice then filed a petition for a common-law writ of certiorari in the Chancery Court of Davidson County, naming Fontella Mason, the chair of the prison disciplinary board, Warden Turner, Assistant Warden Robert Adams, and Sheila Martin, the manager of his unit, as defendants. Mr. Rice alleged that his disciplinary hearing violated his due process rights because he was not permitted to call witnesses or to present documentation and because the identities of confidential witnesses were not revealed to him. He also asserted that the discipline was in retaliation for his blowing the whistle on the illegal activities of one of the reporting officers.

The defendants filed a joint motion to dismiss. The trial court granted the motion to dismiss for improper venue. It also declined to transfer the case to the proper court based on its conclusion that Mr. Rice's petition failed to state a claim upon which relief could be granted because his punishment did not implicate due process concerns. Mr. Rice has appealed.

II.

Mr. Rice first insists that Tenn. Code Ann. § 27-9-102 (2000) permits the filing of his petition in Davidson County. The defendants respond that a more specific venue statute, Tenn. Code Ann. § 41-21-803 (2006), controls and that under this statute Hardeman County is the only county in whose courts this suit can be filed. The defendants have the better argument.

Tenn. Code Ann. § 27-9-102, the statute on which Mr. Rice relies, provides that an individual aggrieved by the actions of an administrative tribunal may seek judicial review via a petition for a writ of certiorari in any county where a petitioner or defendant resides or maintains a principal office. However, Tenn. Code Ann. § 41-21-803 specifically requires that all action accruing while a person is housed in a facility operated by the Tennessee Department of Correction be brought in the county where the facility is located. Statutes of specific application control over statutes of general application. *Smallwood v. Mann*, 205 S.W.3d 358, 365 (Tenn. 2006); *Goodman v. City of Savannah*, 148 S.W.3d 88, 92 (Tenn. Ct. App. 2003). Because Tenn. Code Ann. § 41-21-803 is the more specific statute it controls the venue in this case. As the trial court found, the proper venue for Mr. Rice's petition was Hardeman County.

III.

Mr. Rice next argues that the trial court should have exercised its discretion pursuant to Tenn. Code Ann. § 16-1-116 (Supp. 2007) to transfer his petition to the proper county. The defendants assert that the trial court properly determined that Mr. Rice failed to state a claim upon which relief can be granted and, therefore, that Mr. Rice suffered no injustice from the trial court's decision not to transfer the matter. We agree that Mr. Rice's allegations of due process violations fail to state a claim upon which relief can be granted.

Due process claims prompt the court to consider two issues. The first issue is whether the plaintiff is seeking to protect an interest that qualifies as life, liberty, or property. If the plaintiff is seeking to protect an interest entitled to due process protection, the second issue is the degree of procedural protection required in light of the importance of the interest. In the context of prisoner claims, Tennessee, like other states, has adopted the United States Supreme Court's view that a prisoner's liberty interests are not implicated by actions of prison officials that result in restrictions that do not exceed the "ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300 (1995); *Willis v. Tenn. Dep't of Corr.*, 113 S.W.3d 706, 711 (Tenn. 2003).

The trial court concluded that Mr. Rice's punishment of five days in segregation and a four dollar fine does not exceed the ordinary incidents of prison life. This decision is consistent with prior precedent. Even if some aspect of the prison disciplinary hearing violated Mr. Rice's due process rights, he would not be entitled to relief. Accordingly, we concur with the trial court's conclusion that Mr. Rice's due process claims were subject to dismissal in accordance with Tenn. R. Civ. P. 12.02(6).

Notwithstanding the de minimis requirement, a prisoner may still prevail with a petition for common-law writ of certiorari if he or she can prove that the Department failed to conduct the disciplinary hearing in substantial compliance with its own Uniform Disciplinary Procedures. *Willis v. Tenn. Dep't of Corr.*, 113 S.W.3d at 713. The trial court determined that Mr. Rice had not alleged that the Department failed to follow its own rules and procedures. After reviewing Mr. Rice's petition, we reach the same conclusion.

Mr. Rice's chief complaint is that he was not permitted to call certain witnesses. However, the Uniform Disciplinary Rules do not give him an unrestricted right to call witness in a disciplinary hearing. The disciplinary board has the discretion, which it exercised in this case, to decline to permit prisoners to call confidential informants. Tenn. Dep't of Corr. Policy No. 502.01(VI)(L)(4)(c)(3) (Oct. 2007). Further, Mr. Rice signed a written waiver of any right he had to call witnesses. The disciplinary procedures confer upon Mr. Rice no right to submit documentary evidence, other than written witness statements. Finally, the Uniform Disciplinary Procedures do not prevent prison personnel from advising the disciplinary board and do not require that more than one hearing officer preside over infractions such as the one Mr. Rice was accused of.²

IV.

We affirm the judgment dismissing Mr. Rice's petition for a writ of common-law certiorari and remand the case to the trial court for whatever further proceedings consistent with this opinion may be required. We tax the costs of this appeal to Clifford Rice for which execution, if necessary, may issue. We also find that Mr. Rice's petition for common-law writ of certiorari and his subsequent appeal are frivolous in accordance with Tenn. Code Ann. §§ 41-21-807(c), -816(a)(1) (2006).

²Because we have affirmed the trial court's dismissal of Mr. Rice's petition, we need not address the defendants' arguments that they were not proper parties to Mr. Rice's lawsuit.

WILLIAM C. KOCH, JR., P.J., M.S.